

## UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

GARY GIANNINI,

No. C 14-05227 LB

Plaintiff,

v.

CARPENTERS PENSION TRUST FUND  
FOR NORTHERN CALIFORNIA,**ORDER EXTENDING THE  
DEADLINE FOR PLAINTIFF TO  
FILE A FIRST AMENDED  
COMPLAINT AND CONTINUING  
THE INITIAL CASE MANAGEMENT  
CONFERENCE TO APRIL 23, 2015**

Defendant.

[Re: ECF Nos. 19, 20]

Plaintiff Gary Giannini filed a breach of contract claim and a “failure to notify” claim against Defendant Carpenters Pension Trust Fund for Northern California (the “Fund”) in state court. The Fund removed the action to federal court moved to dismiss Mr. Giannini’s claims, arguing that they are preempted under the Employee Retirement Income Security Act of 1974 (“ERISA”). (Notice of Removal, ECF No. 1; Motion, ECF No. 5.<sup>1</sup>) On February 5, 2015, the court granted the Fund’s motion and dismissed with prejudice Mr. Giannini’s breach of contract claim and his “failure to notify” claim. (2/5/2015 Order, ECF No. 19.) However, because it was not clear whether it would be futile to allow Mr. Giannini to allege a claim against the Fund under ERISA § 502(a)(1)(B), the court dismissed without prejudice Mr. Giannini’s complaint and granted him leave to file a First Amended Complaint that alleges a claim under ERISA § 502(a)(1)(B) by February 27, 2015.

<sup>1</sup> Record citations are to documents in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 Because he is proceeding pro se, the court reminded Mr. Giannini that he previously had been  
2 provided with a copy of the district court's *Handbook for Litigants Without a Lawyer*. (See  
3 12/24/2014 Order (*Handbook* attached).) It also informed Mr. Giannini that he may wish to seek  
4 assistance from the Legal Help Center, a free service of the Volunteer Legal Services Program, by  
5 calling 415-782-8982, or by signing up for an appointment on the 15th Floor of the Federal  
6 Courthouse in San Francisco, 450 Golden Gate Avenue, San Francisco, California.

7 On February 12, 2015, Mr. Giannini filed a letter saying that he does not understand the papers  
8 he has received from the Fund's attorneys and reiterating that all he is asking for is the money that  
9 he paid into the Fund for almost 29 years. (2/12/2015 Letter, ECF No. 20.) He also asks the court to  
10 review the papers attached to the letter, which, although they are not authenticated, appear to be (1)  
11 a letter from Mr. Giannini to the Fund that is dated January 16, 2013 in which he informs the Fund  
12 that he would like to appeal the Fund's decision, (2) a letter from the Fund to Mr. Giannini dated  
13 February 7, 2013 regarding his appeal, (3) a print-out of Mr. Giannini's pension benefit calculation,  
14 and (4) the Fund's zone status and annual funding notice for plan year September 1, 2014 through  
15 August 31, 2015.

16 Mr. Giannini's letter is not a First Amended Complaint, and he did not file one by the February  
17 27, 2015 deadline for doing so. And without a First Amended Complaint, the documents he  
18 submitted cannot be considered by the court.

19 In light of Mr. Giannini's pro se status, the court, for this time only, will give him additional time  
20 to file a First Amended Complaint that alleges a claim under ERISA § 502(a)(1)(B). If he chooses  
21 to do so, he must do so by March 19, 2015. If he does not, the court will dismiss his action without  
22 prejudice for failure to prosecute it.

23 The court also once again reminds Mr. Giannini that he has previously been provided with a  
24 copy of the district court's *Handbook for Litigants Without a Lawyer*, and that he may wish to seek  
25 assistance from the Legal Help Center. The court attaches the *Handbook* and the court's February 5,  
26 2015 order to this order, too.

27 Finally, in light of the court extending the time for Mr. Giannini to file a First Amended  
28 Complaint, the court continues the March 5, 2015 initial case management conference to April 23,

2015 at 11:00 a.m. in Courtroom C, 15th Floor, 450 Golden Gate Avenue, San Francisco, California  
94102.

**IT IS SO ORDERED.**

Dated: March 4, 2015



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LAUREL BEELER  
United States Magistrate Judge